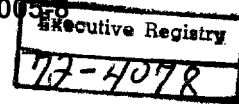


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1 8 JUL 1972

MEMORANDUM FOR: Executive Director

SUBJECT: Nondiscrimination on Account of Age in
Federal Employment - S. 1861 (Section 13)

1. Background

(a) The Age Discrimination in Employment Act of 1967 prohibits employment discrimination for persons aged 40 to 65. In its present form it does not apply to Federal employees.

(b) The purpose of Section 13 of S. 1861 is to cover Federal employees under the 1967 Act. Section 13 constitutes effective law and would serve as a basis for challenging a number of Agency policies, including mandatory retirement at age 60.

2. Proposed Law

The proposed law requires that all personnel actions affecting employees or applicants in executive agencies (which include CIA) be free of discrimination based on age. Its sanctions include:

(a) appeals to the Civil Service Commission and appropriate remedies such as reinstatement or hiring;

(b) after unsuccessful appeal to the Civil Service Commission, civil action by an aggrieved employee or applicant;

(c) involvement by the Civil Service Commission in reviewing agency programs designed to open up opportunities for the older worker and publication of reports on agency efforts in this respect.

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3. Implications

The proposed law would affect both policies and authorities of the Agency:

(a) It would appear to directly conflict with the Agency's age 60 retirement policy under the Civil Service retirement system. A less clear case, but a case nevertheless, is whether it could be construed as repealing the mandatory retirement ages in the CIA Retirement Act.

(b) It could be used to challenge the separation of an employee under Section 102(c) of the National Security Act of 1947 upon a claim that the separation resulted from age discrimination.

(c) It could provide a basis for external review of an applicant's case to determine if the decision not to hire him was based on age.

(d) It would appear to challenge the presumption implicit in the CIA Retirement Act that intelligence is for "younger people" and hence recruitment policies should favor younger applicants.

(e) Finally, by providing a statutory basis for adversary proceedings, the proposed law could come into conflict with: the Director's 102(c) authority; the need to protect information pursuant to section 6 of the CIA Act of 1949, and the Director's responsibility to protect intelligence sources and methods. This could also result in harassment to the Agency and its functions.

4. Status

(a) S. 1861 deals principally with minimum wages and we expect that it will be approved by the Senate this week. The House version of this legislation (H. R. 7130) does not contain a provision comparable to the age discrimination provision in S. 1861. A conference committee appointed to iron out the differences between the House and Senate bills would provide the best forum for resolving our problem.

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(b) We have been in contact with a number of people on the Hill and in the Executive Branch and they have been unanimous in advising against attempting to resolve any problems with the provision on the Senate floor since age discrimination is a politically sensitive issue. However, we do believe that we have prepared the ground for some favorable action by the House conferees at least. We have drawn the proposed law to the attention of the House Post Office and Civil Service Committee and they have indicated their intent to seek the selection of Chairman Dulski to the conference committee to oppose other Federal employee provisions in the bill and to voice the position of the House which in January of this year voted down an Administration measure which had features similar to those found in Section 13 of S.1861. We have also been in touch with staff members of the House Education and Labor Committee under whose jurisdiction this legislation falls and were assured of their cooperation when the measure reaches conference. We have been in touch with staff members of the Civil Service Commission drawing their attention to the possible adverse effects of the legislation on the Civil Service Retirement Act (we learned that the Civil Service Commission was informally behind the provision and in fact had drafted it). Finally, we have been in contact with State Department to draw their attention to adverse effects of the legislation on certain Foreign Service programs, including their retirement act, with the idea they would collaborate with us to put pressure on the Civil Service Commission.

5. Courses of Action

If the Senate conferees are adamant about retaining the age discrimination provision in some form, the courses of action open to us, and their order of preference from a legal standpoint (which does not necessarily follow the order of political feasibility), are as follow:

(a) Amend Section 13 and specifically exclude CIA from its scope. (A spinoff from this approach would be implicit statutory support for the Agency's age 60 retirement policy.)

(b) Amend Section 13 (without reference to CIA) to preserve existing statutory authority concerning mandatory retirement or separation in the interests of the United States. (See attached language.)

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(c) Amend Section 13 (without reference to CIA) so that it applies solely to the competitive service, thereby excluding the Agency. (We were unsuccessful with a similar approach to the Civil Service Commission and the same Senate Labor and Public Welfare Committee earlier this year in connection with equal employment opportunity legislation.)

(d) Secure legislative history in the conference report indicating that there is no intent to subordinate any discretionary authority or final judgment reposed in agency heads for national security reasons in the interests of the United States.

(e) Rely upon the Civil Service Commission to use the discretion granted by Section 13 to make reasonable exemptions from the application of the proposed law when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position.

6. Recommendations

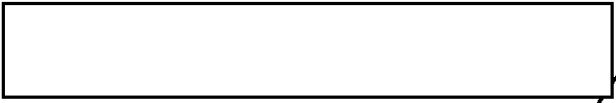
(a) It is recommended that the courses of action outlined in 5(b), (d) and (e) be pursued in that order. (It is recommended that 5(a) and (c) be rejected; the former because it would put CIA out front on a delicate issue and the latter because this approach has been rejected recently by the Civil Service Commission and the Senate Committee in connection with similar legislation.)

(b) It is recommended that the Deputy Director for Support request the assistance of the Civil Service Commission in working out a suitable adjustment in the language with the conference committee.

(c) It is recommended that independently the Legislative Counsel work with staff members of the House Education and Labor Committee to assure that our interests are being protected to the maximum degree feasible.

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STATINTL


JOHN M. MAURY
Legislative Counsel

TAB

S. 1861

Fair Labor Standards Amendments of 1972

Add New Section (f), Pg. 43, Line 9

"NONDISCRIMINATION ON ACCOUNT OF AGE IN FEDERAL
GOVERNMENT EMPLOYMENT"

"SEC. 15...

"(f) Nothing contained in this section shall affect actions
taken pursuant to statute concerning mandatory retirement or
separation in the interests of the United States."

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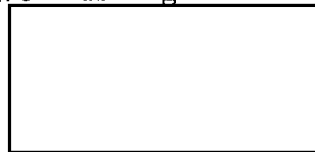
MEMORANDUM FOR THE RECORD

1. I have talked to Andy Ruddock, Director, Bureau of Retirement, Insurance and Occupational Health, and Irving Kator, Assistant Executive Director, Civil Service Commission, on Nondiscrimination on Account of Age in Federal Employment (Section 13 S-1861).

2. Surprisingly, Andy wasn't even aware of the Senate Amendment and agreed to do a bit of research to determine if it threatened any of the early mandatory retirement systems for which he is responsible.

3. Irv Kator, of course, was well aware of the legislation but had not considered the possible conflict with existing statutory authorities for mandatory retirement at ages below 65. It was his opinion, obviously off the top of his head, that the language of the legislation was such that it would not conflict with such statutory authorities. He, nevertheless, agreed to look into this aspect of the problem. He recognized the problem this legislation might give us in relation to the Director's authority under 102(c) and quickly agreed to work the necessary language into the legislative history. He asked that we provide him with the exact language desired. He indicated that he would not want to attempt to amend the language in the Bill.

4. Finally, on the possible impact on our Civil Service System early retirement policy, he clearly believed this was our problem and one which we must fight ourselves.



Harry B. Fisher
Director of Personnel

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1	Executive Director		
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ACTION		DIRECT REPLY	PREPARE REPLY
APPROVAL		DISPATCH	RECOMMENDATION
COMMENT		FILE	RETURN
CONCURRENCE		INFORMATION	SIGNATURE
Remarks:			
<p>The attached recommends for your approval courses of action to be taken in conference committee on legislation which, among other things, could adversely affect the Agency's retirement policy.</p> <p>The recommendations have been coordinated with the General Counsel, DD/S, and Director of Personnel and are contained in paragraph 6 on page 4.</p>			
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FROM: NAME, ADDRESS AND PHONE NO.			DATE
Legislative Counsel 7D43			

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